Tengku Ali ibni Almarhum Sultan Sulaiman v Kerajaan Negeri Terengganu Darul Iman

HIGH COURT (KUALA TERENGGANU) — CIVIL SUIT NO 21-52-92
ABDUL MALEK J
27 NOVEMBER 1995

Constitutional Law *— Suit involving government or ruler — Whether the purported ascension to the Sultanate of Terengganu was in accordance with the state constitution — Whether the non-existence of the State Executive Council and the Jemaah Pangkuan Negeri rendered the appointment as Sultan and ruler of the State invalid — Constitution of the Way of Illustrious Sovereignty No 1 of 1911*

Limitation *— Action against state government — Delay of 47 years — Claim for declaration that claimant was Sultan of Terengganu — Whether claim was barred by limitation — Limitation Enactment 1937 — Public Authorities Protection Enactment 1937 s 2*

The plaintiff had prayed for a declaration that he was the Sultan and ruler of the State of Terengganu from 26 September 1942 to 5 November 1945, that the defendant pay him an allowance for life at a monthly rate of RM1,500 from November 1945 and all arrears up to the date of payment, interest at 8% pa for all arrears and consequential benefits. The defendant opposed the claim, contending that the purported ascension of the plaintiff to the Sultanate of Terengganu was made by the Japanese military administration and did not conform with the Constitution of the Way of Illustrious Sovereignty No 1 of 1911 ('the 1911 Constitution'). The defendant further contended that the plaintiff's claim was barred by s 2 of the Public Authorities Protection Act 1948 and s 6 of the Limitation Act 1953.

Held, dismissing the plaintiff's claim:

(1) The purported ascension of the plaintiff to the Sultanate of Terengganu was not in accordance with the 1911 Constitution as on the date the plaintiff was appointed the Sultan and ruler of the State of Terengganu, the State Executive Council and the Jemaah Pangkuan Negeri were not in existence. As the plaintiff's appointment was not valid, the remaining issues in this case would not arise for consideration (see p 382G–H).

(2) The concept of limitation is that there must be an end to litigation. The relevant provisions relating to limitation in this case would be s 2 of the Public Authorities Protection Enactment 1937 and the Limitation Enactment 1937 and the delay of 47 years clearly disentitled the plaintiff from obtaining any remedy. Also, the plaintiff had accepted all the allowances given to him and had never objected to anything, indicating that he had chosen to waive his rights. This meant that all claims for ancillary relief

must fail. Therefore, the plaintiff's claim was barred by limitation and bad for laches, and consequently not maintainable by virtue of acquiescence, waiver and estoppel (see p 384B–D).

[Bahasa Malaysia summary

Plaintif telah memohon satu deklarasi bahawa beliau adalah Sultan dan pemerintah Negeri Terengganu dari 26 September 1942 sehingga 5 November 1945, bahawa defendan membayarnya elaun untuk seumur hidup pada kadar bulanan sebanyak RM1,500 dari November 1945 dan semua tunggakan sehingga tarikh bayaran, faedah sebanyak 8% setahun atas semua tunggakan dan manfaat yang berbangkit. Defendan menentang tuntutan itu, dihujah bahawa plaintif telah menaiki Kesultanan Terengganu atas perlantikan pentadbiran tentera Jepun dan tidak mengikut 'Constitution of the Way of Illustrious Sovereignty No 1 of 1911' ('Perlembagaan 1911 itu'). Defendan seterusnya mengatakan bahawa tuntutan plaintif itu telah dihalang oleh s 2 Akta Perlindungan Pihak Berkuasa 1948 dan s 6 Akta Had Masa 1953.

Diputuskan, menolak tuntutan plaintif itu:

(1) Naiknya plaintif ke Kesultanan Terengganu tidak mengikut Perlembagaan 1911 itu kerana pada tarikh plaintif dilantik sebagai Sultan dan pemerintah Negeri Terengganu, Majlis Eksekutif Negeri dan Jemaah Pangkuan Negeri tidak wujud. Oleh kerana perlantikan plaintif tidak sah, isu-isu yang lain di dalam kes ini tidak timbul untuk dipertimbangkan (lihat ms 382G–H).

(2) Konsep had masa adalah bahawa mesti terdapat satu kesudahan kepada litigasi. Peruntukan yang relevan bersangkutan dengan had masa di dalam kes ini adalah s 2 Enekmen Perlindungan Pihak Berkuasa 1937 dan Enekmen Hada Masa 1937 dan kelewatan 47 tahun di sini jelasnya menyingkirkan hak plaintif untuk mendapat apa-apa remedi. Juga, plaintif telah menerima bayaran elaun yang diberikan kepadanya dan tidak pernah membantah terhadap apa-apa dan ini menunjukkan bahawa dia telah memilih untuk menetepikan haknya. Ini bermakna semua tuntutan untuk relief sampingan mestilah gagal. Maka, tuntutan plaintif dihalang oleh had masa dan tidak boleh berjaya kerana kelewatan yang tidak berasas, dan oleh itu tidak boleh dipertahankan disebabkan akuiesens, penepian dan estopel (lihat ms 384B–D).]

[*Editorial Note*: The plaintiff has appealed to the Court of Appeal vide Civil Appeal No T–01–163–1995.]

Notes

For cases on suits involving government or ruler, see 3 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1109–1114.

For cases on limitation, see 9 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 1732–1960.

Cases referred to

Goh Ya Tian v Tan Song Gou & Ors [1981] 2 MLJ 317
Henry Trading Co Ltd v Harun [1966] 2 MLJ 281

Legislation referred to

Constitution of the Way of Illustrious Sovereignty No 1 of 1911
Interpretation Acts 1948 and 1967 s 77
Limitation Act 1953 ss 6, 34
Limitation Enactment 1937
Public Authorities Protection Act 1948 s 2
Public Authorities Protection Enactment 1937
Terengganu State Constitution

S Sivasubramaniam, Mura Raju and *Rajoo Dakshina Moorthy* (*Mura Raju & Co*) for the plaintiff.

Idrus bin Harun (State Legal Adviser) and *Othman Abdullah* (Senior Federal Counsel) for the defendant.

Zaki Tun Azmi and *Wan Farid bin Wan Salleh* (*Adnan & Wee*) watching brief for the Jemaah Pangkuan Negeri.

Abdul Malek J: In his statement of claim filed on 11 February 1992, the plaintiff had pleaded that he was the Sultan and ruler of the State of Terengganu from 26 September 1942 to 5 November 1945 when he was deposed by the British for opposing the Malayan Union. He had further pleaded that despite recognizing him as the Sultan and the ruler of the State during the relevant period, the defendant had failed to pay him the monthly allowances and other privileges as stipulated under the State Constitution.

He had, therefore, prayed for a declaration that he was the Sultan and ruler of the State of Terengganu from 26 September 1942 to 5 November 1945, that the defendant pay him an allowance for life at a monthly rate of RM1,500 from November 1945 and all arrears up to the date of payment, interest at 8% pa for all arrears, that the defendant provide a residence befitting his status, costs and other relief the court deemed fit.

The amended statement of defence of the defendant dated 7 February 1995 had, among other things, stated that they were opposing the claim as the appointment of the plaintiff as Sultan and ruler of the state of Terengganu was made by the Japanese military administration and did not conform with the Constitution of the Way of Illustrious Sovereignty No 1 of 1911 ('the 1911 Constitution'), that he was not entitled to the payment of any allowances and to be provided with any residence, that his appointment was made pursuant to a repealed enactment, and that his claim was barred by limitation as provided by s 2 of the Public Authorities

Protection Act 1948 ('the PAPA') and s 6 of the Limitation Act 1953 ('the LA').

At the outset, the parties had agreed that the issues in dispute were:

(a) whether the purported ascension of the plaintiff to the Sultanate of Terengganu on 25 September 1942 was in accordance with the 1911 Constitution;

(b) whether the plaintiff's claim for declaratory judgment in prayer 9(i) is barred by limitation and/or is bad for laches;

(c) whether the plaintiff's claim for arrears of life allowance in prayer 9(ii) and the claim for a suitable house of residence in prayer 9(iv) are barred by limitation and/or bad for laches;

(d) whether the plaintiff's claims in prayers 9(ii) and 9(iv) come within ch 18 of the 1911 Constitution;

(e) whether the plaintiff can now claim under a law which are (is) purported to have been repealed; and

(f) whether the 1911 Constitution can be changed, altered, broken or forgotten by means of Orders in Council dated 21 January 1948 and 9 August 1950.

In his evidence, the plaintiff had said that his father, Sultan Sulaiman, had passed away on 25 September 1942 and he was appointed in his late father's place by the Jemaah Menteri which consisted of the Chief Justice Dato Biji Sura, his father's younger brother the Tengku Paduka Raja, the Menteri Besar Dato Jaya Perkasa, the Ketua Istiadat Tengku Pekerma and Tengku Hitam Hussein, among others. The death was in the afternoon and the same night the Jemaah Menteri had assembled to choose the successor. The plaintiff said he was not aware of the meeting but insisted that the Japanese officials were not present.

He was summoned by the Jemaah Menteri at 6am the following morning and was told that he had been selected to replace his father. They had a short meeting after which he led the funeral procession for the burial rites. He stressed that none of the Japanese officials were in the palace but they only paid their respects from outside the palace. As for his appointment, he maintained that he was rightfully appointed under the 1911 Constitution being the eldest son of his late father.

He admitted receiving a letter of appointment from the Japanese Governor in Singapore together with the other ruling Sultans. When the Japanese occupation ended, the British Military Commander Brigadier William accompanied by Lieutenant Colonel Headley as interpreter had approached him to surrender the State to the British as the four States of Terengganu, Kelantan, Kedah and Perlis were not recognized by the British. A week later, the Sultans of the other States were appointed to the throne but he was never even informed that he had been deposed until replaced by the Tengku Paduka Raja Tengku Ismail.

As for his claim, he explained that he had done so as he was old, unemployed with no skills, and his many descendants had no opportunity to study in England. He asked for sufficient maintenance and a personal

residence. Under cross-examination, he stated that he had heard of the Jemaah Pangkuan Negeri but did not know if it existed since 1911, the year of the 1911 Constitution, which provided that the Sultan was to be appointed by the Jemaah Pangkuan Negeri. He said he was appointed by the Jemaah Menteri not the Jemaah Pangkuan Negeri or the Japanese administration. Under re-examination, he confirmed that he was appointed by the Jemaah Menteri, and the Jemaah Pangkuan Negeri was not in existence at that time.

The plaintiff's younger brother also gave evidence on his behalf. He said that he had left Terengganu in 1954 to be the aide-de-camp of the Sultan of Kedah until 1975 when he retired. On 25 September 1942, he was living in Kuala Terengganu when his father died and the members of the State Executive Council had held a meeting to choose the successor. He had attended as an observer and present at the meeting were the Menteri Besar Tengku Setia Raja, Sultan Ismail who subsequently replaced the plaintiff, Tengku Wangsa, Tengku Pekerma and others. The plaintiff and the Japanese officials were not present. The elder brother of his late father wanted to be the Sultan but this was opposed by Sultan Ismail who said only the sons of the Sultan were eligible. As the eldest son, the plaintiff was selected. The next morning, the plaintiff was called to attend to be officially informed of the appointment. The Japanese officials were also present for the funeral. The official proclamation of the new Sultan was made to all present.

Under cross-examination, he stated that the meeting was of the Jemaah Menteri and the State Executive Council. He did not agree that they were not in existence then as the Japanese administration had taken over. He also did not know if the Menteri Besar and the State Secretary had been sacked by the Japanese administration. He said that from 1911 to 1942 it was the Jemaah Menteri which was empowered to appoint the Sultan and not the Jemaah Pangkuan Negeri which came into being only when Sultan Ismail became Sultan. He did not agree that the Al-Halli Wal-Akdi or the Jemaah Pangkuan Negeri had existed since 1911.

The plaintiff's third witness was the State Secretary who retired in the early sixties. He said he had moved to Kuala Terengganu on 1 January 1942 and the Japanese administration had taken over Singapore and the then Malaya. He was made to head the Forestry Department. When Sultan Sulaiman passed away, he heard the plaintiff had become the Sultan and he had met the plaintiff as Sultan for official forestry matters.

Both the plaintiff and his brother were recalled by consent at the subsequent hearing. When asked by his counsel why he had filed the action only in 1992, the plaintiff had said that at that time the Sultan who replaced him was in power and if he had sued, he would have been banished from the State. Also, he had no money. He admitted he was being paid an allowance of RM480 per month. On recall, the plaintiff's brother had denied that the plaintiff was only appointed Regent but not Sultan.

The defendant elected not to adduce any evidence and relied only on the documents. As the State Constitution was in Jawi, leading learned

counsel for the plaintiff had asked for a long adjournment to file their written submissions which was agreed to by the learned State Legal Adviser.

In his written submissions, learned counsel for the plaintiff had touched on the advanced ages of all three witnesses for the plaintiff and asked the court to consider the long passage of time and its effect on their power to recall. However, it was his view that there was a plethora of documentary evidence to be gleaned from the reference material preponderating towards the plaintiff's action so as to sustain it at its least on a balance of probabilities more so when the defendant, somewhat surprisingly, had decided not to call any witness.

Learned counsel had also traced the historical setting starting from the Japanese forces landing in Kelantan on 8 December 1941 and advancing into and occupying all the other states in the then Malaya. At that time, Sultan Sulaiman Badrul Alam Shah ibni Almarhum Sultan Zainal Abidin III was its reigning 13th Sultan. He passed away on the 25 September 1942 and the plaintiff as his eldest son became the 14th Sultan of the State of Terengganu.

The plaintiff had carried out his duties in co-existence with the Japanese occupation forces but following the horrific bombings of Hiroshima and Nagasaki, the Japanese government buckled and agreed to accept the surrender terms of the Potsdam Declaration and officially surrendered on 14 August 1945. By the following month, the British were back in Malaya and were in haste to get the various rulers of all the States to sign the Malayan Union treaties. On 5 November 1945, a group of persons purporting to have authority in the State led by Da Omar Mahmud, the Menteri Besar, decided to depose the plaintiff from the throne and to appoint Tengku Paduka Raja Sultan Ismail ibni Almarhum Sultan Zainal Abidin in his place

On the first issue, learned counsel for the plaintiff had stated that it could be safely assumed that the members from the two ranks of ministers and chiefs making up the Jemaah Pangkuan Negeri or the Council of Regency would meet and decide on the matter of succession on the night of 25 September 1942 in their capacity as members thereof even though it can be said that the State Executive Council had been abolished or suspended. There was, therefore, a rebuttable presumption in all the circumstances of this case that the plaintiff's appointment to the throne of the State of Terengganu on that night was legal which is reflected in s 114(c) of the Evidence Act 1950.

The fact that the plaintiff had to be proclaimed or installed as Sultan had never been stipulated in the 1911 Constitution and learned counsel for the plaintiff had argued that the defendant cannot raise this in contention as these are not legal requirements but mere customary practices carried out when and if circumstances permit. The plaintiff's ascension was during the occupation of the State by a foreign power and the primacy of the Sultanate and all its attendant manifestations would be pushed down in

terms of importance to make way for the trappings of power of the occupying forces.

As to the defendant's suggestion that the plaintiff was actually only appointed as acting Sultan, learned counsel for the plaintiff had maintained that there was no provision in the 1911 Constitution for an acting Sultan. Even if the plaintiff had been described as such, he added, it did not detract from the fact that he was the lawful successor to the throne.

From the oral evidence, learned counsel for the plaintiff had reiterated that there was a meeting of the Jemaah Pangkuan Negeri and Majlis Mesyuarat Negeri or State Executive Council on the night of the former Sultan's demise which had appointed the plaintiff as the next Sultan. There was no Japanese official present or in the vicinity and there was no evidence sharing that somehow the Japanese administration had influenced the outcome. There were two Japanese officials present the next day but they were there only to pay their respects. Learned counsel for the plaintiff had added that even if it were said that it was the Japanese administration that had appointed the plaintiff, that would still be a valid appointment under the State Constitution and the Syariah, the plaintiff being the eldest son of the late ruler.

As to being deposed by the British, learned counsel for the plaintiff had asked the following questions:

(a) if the plaintiff had not been lawfully appointed Sultan, why then was there a necessity to have him removed?

(b) would it not have done just as nicely, perhaps even better, to have ignored the so-called appointment and installed the successor in the plaintiff's place straightaway?

(c) if the State Executive Council had been abolished or suspended, who were these people who could purport to have the plaintiff removed as Sultan?

The learned State Legal Adviser submitted that there was no necessity for the defendant to call any witness as their rebuttal of the plaintiff's case was in the form of documentary evidence which were by agreement admitted in evidence as bundles A to G. There was, therefore, no necessity to prove the said documents, citing the cases of *Henry Trading Co Ltd v Harun* [1966] 2 MLJ 281and *Goh Ya Tian v Tan Song Gou & Ors* [1981] 2 MLJ 317. In any case, he added, the material witnesses who could testify were the ministers and members of the State Executive Council whom the plaintiff had alleged had appointed him as Sultan but they had all passed away. In the result, the defendant had no one to call.

As for learned counsel for the plaintiff's allegation that the defendant had tampered with the official and governmental records, in particular the gazette notification, the learned State Legal Adviser had retorted that they had no clear and conclusive evidence and the blank spaces in the said gazette notifications do not necessarily mean or raise the inference that they had been tampered with or words deleted therefrom.

With regard to the plaintiff's ascension to the throne, the learned State Legal Adviser had said that the plaintiff must prove he is the heir apparent not merely that he was the eldest son. Further, the power to appoint the Sultan had been conferred on the Council of Regency or Jemaah Pangkuan Negeri also known in Arabic as Al-Halli Wal-Akdi consisting of the ministers and members of the State Executive Council and the plaintiff has to prove that he was appointed by the Jemaah Pangkuan Negeri. The defence contention was that he was appointed by the Japanese military administration. The plaintiff's averment that he was appointed by the Jemaah Menteri was not sufficient in the circumstances as the 1911 Constitution clearly states that the appointing body was the Jemaah Pangkuan Negeri. The testimony of the plaintiff's younger brother, he added, as regards the relevant meeting on the night of the death was hearsay as he was only present as an observer and it was based on what he had heard. In any case, the learned State Legal Adviser had argued that it was strange that there was no official record of the purported meeting and the decision of the State Executive Council of the purported appointment and that there was no written proclamation of the plaintiff as Sultan by the State Executive Council.

On the contrary, the State Legal Adviser had submitted that at pp 8–12 of bundle F, the official record published two days after the event shows that the plaintiff was only appointed as 'Pemangku Sultan bagi sementara' or 'Regent for the time being' in the presence of the governor on 26 September 1942 before the funeral. There is also the official record to show that the plaintiff was conferred the title Sultan on 30 September 1942 by the Syuchokan or Governor as stated in the *Cahaya Timur* published on 5 October 1942. There are several other extracts from various materials at pp 3, 9 and 21 of bundle A and pp 26 and 28 of bundle C to indicate that the plaintiff was appointed by the Japanese administration and not the Jemaah Pangkuan Negeri. As far as the defendant was concerned, the purported meeting on the eve of the funeral was to appoint the plaintiff as Regent. The plaintiff had also not proved, according to the State Legal Adviser, whether there was sufficient quorum as required by the 1911 Constitution for the alleged meeting.

It is also the submission of the learned State Legal Adviser that from the various gazettes, it is clear that the ministers, State Executive Council and Jemaah Pangkuan Negeri had been effectively stripped of their powers by the Japanese administration. By Gazette No 73 at p 112 of bundle C dated 29 April 1942, it had been stated that the Japanese Government had taken over the administration. By Gazette No 78 dated 1 June 1942 at pp 1–3 of bundle D, the Japanese military administration had changed the constitution of the Government when they established their own system of government headed by the Governor. The same gazette also announced the closure of the offices of the Menteri Besar and the State Secretary. By Gazette No 79 also dated 1 June 1942 at p 113 of bundle C, it had been announced that the Menteri Besar and the State Secretary had ceased to hold office. All these evidence as to the non-existence of the relevant bodies is strengthened by the letter dated 14 November 1943 written by

the plaintiff to the Thai Military Commissioner requesting for the State Executive Council to be reinstated and the appointments to be made of the ministers and State Executive Council on 15 December 1943. A

Having considered the plaintiff's oral evidence, the lengthy written submissions of learned counsel for the plaintiff and that of the learned State Legal Adviser, the documents tendered and the relevant authorities, it was my finding, and this is not disputed, that the plaintiff did ascend the throne of the State of Terengganu on the 26 September 1942 up to the 5 November 1945 when he was deposed by the British. B

As regards the first issue to be decided, I had considered the fact that an official installation did not take place although a proclamation had been made in the gazette, *Cahaya Timur*, and installations had taken place for Sultans for that State before and after the plaintiff. I had also taken into consideration that the official installation need not take place at the time of the appointment and in the circumstances of this case was not really possible because of the emergency. C

It must be emphasized that by the gazette, *Cahaya Timur* No 38 dated 28 September 1942, the plaintiff had been described as the eldest son of the late Sultan who had been appointed as the new Regent while waiting for the consent and order of the Japanese Government. D

The appointment as gazetted had been made before His Excellency the Governor of the State of Terengganu, heads of Government departments, royalty and others and the speech of the Japanese Governor to the plaintiff on 30 September 1942 as to the appointment was on the basis that the Supreme Military Commander of the Japanese forces in Malaya had specially considered the matter and had ordered His Excellency the Governor to bestow the title of Sultan to the plaintiff for an unspecified period conditional upon changes taking place subsequently. Apart from that, there is no other record as to the appointment of the plaintiff and as to who were present at the time of the appointment except for the testimony of the plaintiff and his younger brother. E F

In the State of Terengganu's gazette dated 29 April 1942, the official proclamation was that the Malay States had been occupied by the Japanese Government. By another gazette dated 1 June 1942, the offices of the Menteri Besar and the State Secretary had been closed and Tengku Seri Setia Raja, the Menteri Besar and Dato Jaya Perkasa, the State Secretary, had ceased to function in their respective posts. The State Executive Council was reconstituted by the Siamese Government only on 7 July 1943. G H

It follows that on the date the plaintiff was appointed the Sultan and ruler of the State of Terengganu, the State Executive Council and the Jemaah Pangkuan Negeri were not in existence and the plaintiff could not have been validly appointed under the 1911 Constitution. As such, the answer to the first issue can only be in the negative and the other five issues, as agreed, would not arise for consideration. I

Despite my finding on the first issue, it may be appropriate to touch on the other issues raised particularly the issues of limitation and laches. Learned counsel for the plaintiff had said that s 6 of the the LA does not bring a claim for declaratory relief within its ambit and s 2 of the PAPA appears to be intended to protect officers of government in the execution of their statutory duty and does not cover a case like the present. However, he conceded that this is subject to the court's discretion whether or not to grant the application on this basis.

Why did it take the plaintiff so long? The plaintiff had explained that he could not make the move because others were in authority and he himself could not find the services of lawyers able and willing to take on the daunting task as it involves taking on the State Government, and the British at one period of time, and revive the controversy surrounding his removal which would certainly upset the then ruling house. He was also faced with monetary problems. However, the climate today is different to enable him to make the claim.

The State Legal Adviser, however, submitted that the PAPA came into force only in 1948 when it repealed the Public Authorities Protection Enactment 1937 ('the PAPE'). Under s 2 of the PAPE, the plaintiff had only three months to bring the suit but the PAPA extended it to 12 months. This period was further extended to 36 months in 1974. However, the State Legal Adviser's contention was that at the time of the plaintiff's removal, only the PAPE applied and he should have filed his action before 5 February 1946. Although s 77 of the Interpretation Acts 1948 and 1967 provides that a right acquired under a repealed law is not affected by the repeal, such accrued right is always subject to limitation. Even if it is held that the PAPE does not apply but the PAPA does, the action is still obviously out of time.

The State Legal Adviser had also stated that the defendant did not succeed in their application to strike out the claim as limitation under the PAPA was not pleaded while limitation under the LA was held subject to exception. The limitation issue was also not raised as a ground of appeal before the Supreme Court which heard the relevant appeal as regards the refusal to strike out the claim as it proceeded purely on the issue of jurisdiction and forum non conveniens. It is settled law, he added, that the court will not make a declaratory judgment where there has been unreasonable delay or where a claim is statute-barred. It follows that where a declaratory judgment is refused on the ground of limitation, any claim for arrears of pay or allowances is also barred.

Similarly, the Limitation Enactment 1937 ('the LE') was applicable to the State of Terengganu until it was repealed by the present LA on 19 February 1953 and therefore applicable to the instant case. The period applicable is six years which expired on 5 November 1951 and s 34 of the LA provides that nothing in the Act shall enable any action to be brought which was barred before the commencement of the Act by any Enactment repealed by the Act.

Even if the LA applies, the suit is time-barred under s 6(1)(a) and (d). The claim is not subject to exceptions in the LE or LA like fraud or disability which postpones the limitation to the date such fraud is discovered or disability ceases. In the consequence, all claims for ancillary relief must also fail.

The concept of limitation is that there must be an end to litigation. And no one can disagree that 47 years is a bit too long for any defendant to wait to be sued. The delay is so clear that it disentitles the plaintiff from obtaining any remedy. In the meantime, the plaintiff had accepted all the allowances given to him. He had never objected to anything indicating that he had chosen to waive his rights. If the plaintiff had any problems with the Sultan who replaced him, that Sultan has passed away on 20 September 1979 but the plaintiff waited another 13 years before coming to court. In fact, he could and should have sued the colonial government then, if he had done so before the country's independence in 1957. After all this, it was my opinion that the plaintiff's claim is barred by limitation and bad for laches, and consequently not maintainable by virtue of acquiescence, waiver and estoppel.

I had accordingly dismissed the plaintiff's claim with costs.

Application dismissed.

Reported by Ng Kian Pin